



### Reply- Arguments and Remarks

This reply addresses your concerns in the 4/15/04 Office Action with respect to:

#### 1. Office Action: Specification – New Matter

##### Reply: New Matter Withdrawn

(1) The amendment filed December 8, 2003 is withdrawn due to concerns about the introduction of new matter.

#### 2. Office Action: Claims Objections – System and Method

##### Reply: Amend to Recite Method Only

(2) Claims, 9, and 16-18 are amended to recite method only.

#### 3. Office Action: Claims Objections- 35 USC Section 112

##### Reply: Claims are Clarified or Referred to Specification

(3) Claim 9 is clarified to convey to one reasonably skilled in the relevant arts that the inventor at the time the application was filed had possession of the claimed invention.

The amendment to include more clearly the threshold cost-fee-benefit transfer step of the method in claim 9 clarifies that the inventor has possession of the claimed invention at the time of the application. This threshold cost-fee- benefit transfer step is included in many paragraphs in the specification.

(4) Claims 16 and 18 are dependent on claim 9 and are clarified consistent with the above.

(5) Claim 17 is dependent on Claim 1, not on Claim 9, and is supported by the application.

(6) Claim 14 is supported by the application. Claim 14 is addressed in the specification in section paragraphs 0048, 0057, 0092, 0154, 0169, 0180, 0188, where the fees charged the Caller party (or third party) indirectly benefits the Receiver Party or directly benefits a charity.

(7) Claim 19 is amended to reflect that every step of Claim 1 except ii-iv can be automated as supported by paragraphs 0150, 00175, 0181, 0183, 0192, 194, 0205 of the application.

(8) Claim 20 is amended to reflect that steps ii-iv of Claim 1 may be taken in different order or sequence or performed simultaneously.

4. Office Action: Claim Rejections – 35 USC Section 102(e)

35 USC 102(e) does not apply because the Keen.com patent does not disclose, anticipate, or describe the present invention.

Reply: Keen.com Patent does not Disclose or Anticipate Present Invention

(9) Claims 1-8, 12, 15, 9, and 20 are not previously disclosed, anticipated, or covered by the Keen.com patent.

Present Invention is a Novel Rights Management and Access Method; Gatekeeper

The present invention discloses and claims a novel rights management and access management paradigm where Receiver parties grant Caller Parties the right to transmit communication to an account authentically associated with them for a threshold fee, cost or benefit transfer. The present method is a substantially different invention from that material disclosed but not claimed in the Keen.com disclosure and invention. Keen.com's disclosure does not disclose or anticipate the method in the present invention.

The present invention and method discloses and claims a gate keeper method for communications that requires a fee or cost to be borne by a Caller Party or benefits transferred to a Receiver Party in order to allow a Caller Party to access or to transmit communication to an account associated with the Receiver Party. The present invention is a novel invention that is not anticipated or disclosed by Keen or other material.

For example, there are many Receiver Parties, including famous people, who would like to receive communication from Caller Parties if the Receiver Party is compensated for the effort and rights associated with making the Receiver Party or an account associated with the Receiver Party accessible to Caller Parties; but the Receiver Parties do not want to be burdened with having to reply to each communication, much less be burdened with having to reply to each communication in a real-time personal fashion such as is disclosed in the Keen.com material.

The present invention discloses a novel invention to address these concerns which have not yet been disclosed or addressed elsewhere.

Keen.com's Disclosure of Use of Email is Not Novel or Patentable:

Keen.com discloses a system or method wherein email<sup>1</sup> is used to assist a consumer and expert to schedule a time to connect together in real-time<sup>2</sup> by phone.

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<sup>1</sup> **e-mail or e-mail** A system for sending and receiving messages electronically over a computer network, as between personal computers. A message or messages sent or received by such a system. *American Heritage® Dictionary*

Keen.com discloses a use of email that is entirely traditional, obvious, and not novel. The use disclosed in Keen.com material is not different than any other existing email system. There is nothing patentable or novel about using email to schedule an appointment.

Indeed, since Keen.com disclosed a traditional use of email that was already in the public domain, there was no dedication to the public of new matter nor was there a disclosure of matter that is claimed in the present invention.

Keen.com's Disclosure of Email Does not Claim or Specify the Use of Email for a Fee or Cost;

The specification and other matters associated with the Keen.com patent do **not** disclose or anticipate a system or method where text inputs are transferred for a fee or cost borne by the Caller Party. The example illustrated in Keen.com indicates that although the connection is generated through the server, no charges are borne for the text input or transfer to the expert. The Keen.com material only indicates charges for the per-minute charges of the real-time communication.

More specifically, the steps in the Keen.com method do **not** disclose or anticipate steps in a method where threshold fees or costs are borne by the Caller Party before text or emails are transmitted or transferred to a Receiver Party.

Keen.com uses text inputs and email to route customers and schedule appointments in order for the Consumers to later pay a per-minute fee to communicate with an expert in a real-time fashion.

Since email is asynchronous and not a real-time communication media, email is simply disclosed in Keen.com as a means in which to assist the claimed real-time fee-based communication.

Clearly, the Keen.com disclosures with respect to text input and email are not patentable. The Keen.com disclosures and claims that are novel or patentable require mutuality, a "connection", or "bringing together". Those are a substantially different invention than the invention claimed and disclosed in the present invention. The novel and patentable matters in Keen.com's patent disclose and claim a method and system that requires a "bringing together", a "connection" between consumer and expert, or interaction of the customer and expert parties in real-time.

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<sup>2</sup> *real-time* (rē'el-tīm, rē'l-) *adj.* Of or relating to computer systems that update information at the same rate as they receive data, enabling them to direct or control a process such as an automatic pilot. *The American Heritage® Dictionary of the English Language, Fourth Edition* © 2000 by Houghton Mifflin Company

Keen.com does not disclose or describe a system or method that requires a threshold fee, cost, or transfer of benefits in order to grant a Caller Party access for transferring information to a Receiver Party.

Keen.com's Patent and Disclosure Claims "Real-time Connection" Which Excludes Email

Email is asynchronous<sup>3</sup> send/receive communication, not a real-time connection. Keen.com's patent and novel disclosure claims "real-time" communication "connection". While online video streaming may be real-time, email is not.

Keen.com discloses an obvious use of text input and email to coordinate users and to schedule a later real-time appointment for the purpose of bring together the consumer and expert in a real-time connection. The use of email and text input to communication a time or schedule is, in and of itself, not patentable or novel.

Therefore Keen.com's disclosures, claims and definitions, to the scope and extent that they discuss email, do not claim or disclose novel or patentable aspects. It would be inappropriate to include email as novel, patentable, or protected in the Keen.com disclosure because it is not used in a novel or patentable way. Keen.com likely decided to or was forced to not claim the use of email in the Keen.com disclosures because there was no novel use.

(10) Keen.com's invention and disclosures do not describe, disclose, or anticipate under 35 USC 102 the present invention. The present invention is novel in that it requires a threshold cost, fee, or transfer of benefits or accounting prior to the Receiver Party accepting the transmission of the Caller Party's communication or email into an account associated with the Receiver Party.

Keen.com Limited by Its Definitions; Keen.com Does not Disclose or Anticipate Present Invention

(11) Keen.com's invention is dependent on the definitions in its patent, disclosure, and application. Keen.com's definitions tend to be broad but, even so, the definitions do not disclose, describe, or anticipate the invention in the present application.

Importantly, Keen.com defines "means to contact", its fundamental invention, as a method, information, or technology to "bring together the consumer with one or more experts".

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<sup>3</sup> **asynchronous** adj 1: (digital communication) pertaining to a transmission technique that does not require a common clock between the communicating devices: timing signals are derived from special characters in the data stream itself [ant: synchronous] 2: not synchronous; not occurring or existing at the same time or having the same period or phase [ant: synchronous] *WordNet* ® 1.6, © 1997 Princeton University

Specifically, Keen.com Pat No 6,223,165 defines:

“Means to contact: any method, information or technology used to *bring together* the consumer with one or more experts, including but not limited to telephone, Internet telephony, email, audio, and/or video.” (Emphasis added)

“Together”<sup>4</sup> is defined as

1. In or into a single group, mass, or place.
2. mutually or reciprocally;
3. Simultaneously;

Even broadly construed, “Bring together” would be commonly understood to mean an interaction or exchange of information between the consumer and expert, as is consistent with the claims and specification of Keen.com’s patent. In any case, “Bring together” would be meaningless without a sense of mutuality or an interaction where both parties participate in receiving and sending information.

Since Keen.com’s technology, disclosure, invention, and claims address a real-time synchronous interaction between an expert and a consumer, this definition of “bring together” requires joint communication and interaction by the parties. The limited scope and meaning of this defined term makes sense within the context of the invention that Keen.com is claiming. Basically Keen.com is claiming an on-line reference source for 900 telephone numbers where experts charge consumers a per-minute fee for providing real-time information to consumer over the telephone or real-time asynchronous internet telephony or streaming media technology. Experts and consumers are brought together in real time and the consumer pays a fee for the time that he is brought together with the expert.

The use of email is not real-time or synchronous and is not covered by the scope of Keen.com’s disclosures or claims. In the present invention, the communication is not necessarily mutual. The Receiver Party grants the Sender Party the right to transmit communication to the Receiver Party ( or an account associated with the Receiver). There is no requirement that the Receiver Party responds or even views the communication.

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<sup>4</sup> **Together** \To\*geth"er/, adv. [OE. togedere, togidere, AS. t[=o]g[ae]dere, t[=o]g[ae]dre, t[=o]gadere; t[=o] to + gador together. [root]29. See to, prep., and gather.] 1. In company or association with respect to place or time; as, to live together in one house; to live together in the same age; they walked together to the town. *Soldiers can never stand idle long together.* --Landor. 2. In or into union; into junction; as, to sew, knit, or fasten two things together; to mix things together. *The king joined humanity and policy together.* --Bacon. 3. In concert; with mutual col"o]peration; as, the allies made war upon France together. *Together with*, in union with; in company or mixture with; along with. *Take the bad together with the good.* --Dryden. Source: Webster's Revised Unabridged Dictionary. © 1996, 1998 MICRA.

The scope of Keen.com invention and disclosure is limited by its definition of “mean to contact”, “bring together”, and “connection” between experts and consumers. The scope of Keen.com’s disclosure does not encompass, disclose, anticipate or apply to the present invention. The present invention is a gatekeeper and access rights management invention.

In the present invention, it is not expected or claimed that the Receiver Party will respond to or interact with every or even most Caller Parties. The present invention does not anticipate that there will be real-time communication between the Caller Party and the Receiver Party. The present invention is not disclosed or anticipated by the Keen.com invention that discloses, requires or anticipates a means of contact that brings parties together.

The present invention provides Caller Parties with an opportunity to transmit communication to a Receiver party for a fee. This invention is not disclosed or anticipated by Keen.com.

My invention contemplates a threshold payment before the transmission of the Caller Party’s communication to the Receiver Party in order to compensate the Receiver Party for the right for a Caller Party to transmit communication to an account associated with it. This invention is not disclosed or anticipated by Keen.com.

Importantly, transmitting emails without receiving a response is not an activity that ‘brings parties together’. There is no “connection”<sup>5</sup> as required in Keen.com. On the contrary, transmitting emails is asynchronous, does not bring the parties together, and in general would not be communication that falls into Keen.com’s definition of a “means to contact” or a “connection”. Therefore the act of transmitting email communication for a fee is not disclosed or claimed in Keen.com.

In the present invention, it is expected that the Receiver Party will not, in general, personally respond or provide any specifically personal communication to the Caller Party. This invention is not disclosed or anticipated by Keen.com

In the present invention, there is no requirement to be brought together such that Receiver Party responds to Caller Party. This is not disclosed or anticipated by Keen.com.

Unlike the disclosure and invention in Keen.com that provides what is equivalent to an on-line directory of 900 numbers that takes a percentage fee of the per-minute charges, the present invention discloses and claims a novel rights management and access management paradigm where Receiver parties grant Caller Parties the right to transmit communication to an account authentically associated with them for a fee or cost. These

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<sup>5</sup> **con·nec·tion** (kŏ-nĕk shŏn) *n.* 1(a) The act of connecting. (b) The state of being connected. (2) One that connects; a link: *made a connection between the two pipes.* (8) A physical link, such as by wire or fiber-optic cable, between two or more points in a telecommunications system: *established a connection to the Internet.* *The American Heritage® Dictionary, Fourth Edition © 2000 by Houghton Mifflin Company.*

are substantially different inventions. Keen.com's disclosure does not disclose or anticipate the method in the present invention.

The steps of the method in the present invention have been clarified in this amendment to clarify the requirement of a threshold fee or cost charged or borne prior to the Caller Party being allowed to transmit communication to the Receiver Party. This step of the method was clearly articulated in the specification of the present invention. Clarifying this step of the method will narrow the scope of the present invention. This step of the method has not been disclosed or anticipated by Keen.com.

Clarifying Step of Method in Claim 1: Threshold Payment or Bearing of Cost

(12) Claims 1-8, 12, 15, 9, and 20 are clarified in that the step of requiring a threshold payment is clearly spelled out as step v of Claim 1. The requirement of a threshold payment is clearly spelled out in the application and specification. This more clearly specified step narrows the scope of the invention.

(13) Claim 1 is amended to clarify the requirement of a threshold payment with step v of Claim 1.

(14) Claim 2-8 are dependent on Claim 1.

(15) Claim 3 is not covered by Certification specifics in Keen.com. Keen.com offers tests or interviews presumably taken by the expert to show whether or not the expert is competent to render advice in a particular matter. Keen.com does not disclose third party authentication or certification procedure addressing matters pertaining to the person's identity and does not disclose background authentication taken by or from third parties. Keen.com's authentication procedures revolve around whether the person seeking to offer advice through their system is competent to offer their expertise.

Keen.com's system is self-referential and based on its own criteria of expertise. Keen.com's system does not provide authentication procedures based on outside third party information or other verifiable background information that the person purporting to be an identifiable person actually is that character. Without reference to outside information, it is a fundamentally flawed authentication procedure.

In any case, Keen.com's authentication procedure does not disclose or anticipate the authentication procedure in the present invention. Keen.com authenticates a person's identity by referring to information on the person's computer. The present invention seeks to authenticate that a person claiming to be an identifiable person actually is that persons by utilizing third party and objective means. "Web-based questionnaires, phone, internet, or face-to-face interview, live video connections, etc." will not provide a third party authentication that is required to truly authenticate a persona's identity.

The authentication procedures in the present invention are not disclosed by or anticipated by the certification or authentication procedures disclosed in Keen.com.

(16) Regarding Claim 5, Keen.com discloses a keyword text input but does not disclose a means to input audio, graphics or to create, to format communications, emails or transmissions.

(17) Regarding Claim 6, Keen.com does not disclose a means to form a legally binding contract between the parties that is separate and distinct from the "user's agreement".

The present invention discloses a method that allows a Receiver Party to specify the terms on which he or she will accept communication. Those terms may be chosen from a set of presented terms or those otherwise developed or written in order to allow the Receiver Party to present to a Caller Party the terms on which the Receiver Party allows access. For example, the specification at paragraph 0177 and 0178, that the Caller Party grants all rights or any kind in the content of the communication to the Receiver Party.

Keen.com does not disclose the ability of Receiver Parties to offer to contract on different terms or conditions (other than price) other than those in the universal user's agreement. Keen.com only allows users to contract on the terms specified in the user agreement which is a uniform agreement for all users.

The present invention allows Receiver Parties to offer and price different communication services and agreements in addition to granting for a benefit the right for a Caller Party to transmit communication to their account.

(18) Regarding Claim 8, the present invention discloses that the Receiver Parties are compensated for receiving the communication or participating in the method. Keen.com discloses and contemplates that the Experts are compensated as a per minute compensation for rendering individual services to consumers. These are substantially different compensation schemes. Keen.com does not disclose or anticipate the method or compensation method disclosed in the present invention.

(19) Regarding Claims 10-12 and 15, (17), 19, 20, these claims are dependent on Claim 1 which is clarified.

Office Action – Claim Rejections under 35 USC 103: Obviousness

Reply: Claim 13 is Withdrawn

(20) Claim 13 is withdrawn.



### **Conclusion**

Please review the Office Action, Amendments, and invention with respect to the clarifications in this letter. Hopefully this clears up some of the issues mentioned in the April 15, 2004 letter.

I request the opportunity to provide additional information or amendments in order to address these or future concerns.

Thank you for your consideration.

Very Truly Yours,

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